

Real Property Management Manual

Chapter 1: Acquisition by Lease



**DEPARTMENT OF
GENERAL SERVICES**

DIVISION OF REAL ESTATE SERVICES

Serving Government. Serving Virginians.

Acquisition by Lease

Policy Name:	Acquisition by Lease
Effective Date:	July 1, 2008
Revision Date:	
Authority:	§2.2-1149 of the Code of Virginia, 1950, as amended
Application:	Applies to all state agencies, departments and institutions, unless authority is otherwise delegated
Purpose:	When state-owned space is not available to house public programs and services, and it is determined that purchasing or construction of a building with state funds is not a feasible option, the Division of Real Estate Services will manage the leasing of space required to fulfill the requirement.
Replaces:	December 15, 1993 version of <i>DGS Real Property Management Manual, Chapter 1: Acquisition by Lease</i> ;
<p>The Division of Real Estate Services (DRES) was created in July 2005 with the express purpose of managing the Commonwealth's real estate portfolio pursuant to the objectives of Executive Order 75 (04). Centralized management of the portfolio enhances efficiency, improves performance, and reduces overall costs. DRES has been organized to support the missions of our agency customers by providing solutions to real estate needs.</p> <p>Virginia Code §2.2-1149 provides, in part, that "...no state department, agency or institution shall acquire real property by gift, lease, purchase or any other means whatsoever without following guidelines promulgated by the Department of General Services..." The leasing procedures provided herein by the Department of General Services (DGS) require the Division of Real Estate Services (DRES) to secure leased facilities of a suitable size, quality, location and cost to enable each agency, department and institution to efficiently deliver their public services. DRES supports the mission of government and enables customers to succeed by allowing agencies to focus on their unique core missions and service delivery, rather than on real estate. Centralized management of the leased real estate portfolio results in overall cost savings and efficiencies through better utilization of facilities and resources.</p> <p>DGS will be the named Tenant on all leases for all agencies within the Executive Branch* and will assign leased space to a single agency or any combination of agencies. DRES will provide lease administration services, including the payment of rents and other charges payable to the landlord to all Executive Branch agencies.</p> <p>DRES will provide support to all other agencies, departments or institutions not subject to lease administration by DGS/DRES on a fee basis.</p> <p>Different types of leases are listed in this manual. All lease types are subject to the General Provisions in Appendix B, as the provisions may apply to that lease type.</p> <p>Refer to Appendix B, "General Provisions, Leases" for general information about the leasing process.</p> <p style="text-align: center;">* <i>Selected agencies may be excluded during a transition period.</i></p>	

1.1 Office Lease/Warehouse/Parking Structure

This section includes guidelines for all facilities except land and surface parking lots.

1.1.1 Initiate Space Requirement

- a) The Transaction Manager and the agency work together to define a need to initiate a transaction.
- b) The Transaction Manager sets up a team meeting (in person or by conference call) to identify the scope and schedule of the transaction and to discuss team responsibilities.
- c) If the Commonwealth's contract broker is referred to work on the transaction, the Transaction Manager will initiate the representation letter.

1.1.2 Space Requirements Analysis (OSQ)

- a) Certifications Required:
 - (i) Pursuant to Section 4-5.07 of the Appropriation Act, agencies certify to DGS that the “volume of leased space conforms with the space planning procedures for leased facilities developed by the Department of General Services and approved by the Governor.” Refer to the *DRES Space Planning Policies and Procedures for Leased Facilities*, contained in Appendix A.
 - (ii) Certification that “funds are available within the agency’s appropriations ... for the cost of the lease” is also required by Section 4-5.07 of the Appropriation Act.
- b) Agency Space Planning Worksheet and Office Space Questionnaire:
 - (i) The agency provides information on its space requirements on the *Space Planning Worksheet for Agencies*, which is found in the Forms and Templates folder in the Transaction module of IREMS.
 - (ii) The Transaction Manager translates the information from the Space Planning Worksheet into the *Office Space Questionnaire (OSQ)* to determine the number of usable square feet (USF) to seek in the real estate market.
 - (iii) For space uses other than “office” (such as warehouses, clinics, parking structures, etc.) the agency will fill out the Space Planning Worksheet to the extent it applies to the space need. The OSQ will be modified as necessary by the Transaction Manager to clearly detail the agency’s space need.
 - (iv) The Transaction Manager can approve any OSQ where the space need is 196 usable square feet per full-time equivalent (USF/FTE) or less. The DRES director (or designee) will approve all others.
 - (v) The Transaction Manager alerts the transaction team that the approved OSQ has been posted in the documents folder in IREMS. The approved OSQ will have a check box for the two

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certifications required in Section a) above. The agency will be asked to check out the document, fill out the check boxes and check the document back into IREMS. This check in of the document will serve as the agency's certification of space conformity and funding.

- c) Potential Capital Lease or Capital Outlay Lease:
 - (i) If there is an estimate that the cost of the lease may be in excess of \$4 million or will take the form of a build to suit lease, there will be an evaluation of whether the lease might be considered a capital lease or capital outlay lease.
 - (ii) If no authority for a capital or capital outlay lease has been obtained by the agency and the lease is determined to be a capital or capital outlay lease, DRES may recommend the transaction be put on hold pending this authority, be scaled back in scope, or cancelled.

1.1.3 Market Search and Solicitation

- a) Market solicitations of available space for lease will be conducted by broker services contracted by DGS/DRES or by the Transaction Manager handling the transaction. DRES will determine the most suitable method of conducting the market solicitation to generate the most competition, given the nature of the transaction and any known time limitations.
 - (i) The engagement of broker services is intended to bring the agency good quality space in which to conduct its specialized public services. However, there could be occasions when DRES may determine that the engagement of the broker will not necessarily benefit the Commonwealth and use of its own resources can result in an equally beneficial result. Such instances might include leases with local governments or other government agencies, where a below market rent can be achieved. In these cases DRES will manage the negotiations on the transaction.
- b) The objective is to receive as many viable responses as possible. The effort put forth to receive these responses may need to be adjusted in markets with limited inventory to assure adequate competition. Normally, five (5) responses will be deemed an adequate and acceptable number for consideration. If less than five (5) are obtained, an explanation will be provided on the proposal summary form found in the Documents folders in the Transaction module of IREMS.
- c) The typical method to solicit for leased space is the request for proposals (RFP), which will be sent directly to property owners with known facilities in the market area, brokers, current landlords (as appropriate), etc. The typical response time for proposals will be one (1) to two (2) weeks, but the time may be extended by DRES.
 - (i) The RFP is drafted by the Transaction Manager or the contract broker and is posted to the documents folders in IREMS where it will be reviewed within DRES. Any specific questions

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for the agency to answer will be directed to them via team mail in IREMS. To maintain momentum of the transaction, the agency may be asked to respond within a certain time frame.

- d) The Transaction Manager or contract broker identifies possible candidate locations in the market area, including the current space, if appropriate. The Transaction Manager or contract broker sends the solicitation documents out to these identified sources and any other supplemental sources identified (broker “blast” list, current owner, etc.) and posts the space need on eVA.
 - (i) A copy of the eVA posting and the listing of potential owners found in the market area, plus any supplemental sources that were sent a solicitation will be posted to the appropriate folder in the Transaction module of IREMS.
- e) All proposals will be reviewed and evaluated for completeness, total cost, etc. and a determination will be made by DRES, upon consultation with the agency, if necessary, if any facility is to be pursued further.
- f) Each solicitation will contain the following:
 - (i) Only the Department of General Services, Division of Real Estate Services (DGS/DRES), or its contract broker is authorized to negotiate the terms and conditions of a proposed lease agreement. The Proposer typically communicates directly with DRES and/or the contract broker and does not rely on communications with or information provided by field personnel or any other source.
 - (ii) The Commonwealth reserves the right to reject any and all offers, to negotiate separately with competing proposers, and to cancel the solicitation at any time. If, in the opinion of the Commonwealth, lease negotiations with a selected proposer cannot be concluded in a timely manner following the selected proposer’s receipt of a draft lease agreement, the Commonwealth may discontinue negotiations and commence negotiations with another interested proposer.
 - (iii) Certain disclosures related to leasing and doing business with the Commonwealth of Virginia are attached to the RFP. A copy of these is attached in Appendix C, Prohibited Lease Terms.
 - (iv) Leases that may be considered “capital leases” and “capital outlay leases” will require approval of the General Assembly and/or the Governor. Also, pursuant to §10.1-1188 of the Code of Virginia, leases considered a “major state project” by the Department of Environmental Quality will require the preparation and submission of an Environmental Impact Report (EIR), which requires approval on behalf of the Governor.

1.1.4 Selection of Facility “Short List”

- a) Tours of the preferred facilities by the transaction team (agency, broker and Transaction Manager) will be arranged by the Transaction Manager and/or the contract broker.

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- b) As part of this process the Transaction Manager considers the potential of capital lease or capital outlay lease issues considering transfer of title, total term cost, and other factors that might influence this determination. All build-to-suit leases will be evaluated as potential capital or capital outlay leases.
- c) The Transaction Manager will consult with the Department of Environmental Quality (DEQ) to determine if an Environmental Impact Report (EIR) will be needed for any of the potential “short list” properties, pursuant to Section 10.1-1188 of the Code of Virginia. A copy of the procedures manual can be found on the DEQ website at <http://www.deq.virginia.gov/eir/stateimpact.html>.
 - (i) If the lease is to be written with DGS as Tenant, DRES (or its contract broker) will ask the landlord to provide the EIR report and DRES will submit it to DEQ for review.
- d) All proposal responses are summarized on the Proposal Summary Form by the Transaction Manager or the contract broker. If the proposer did not respond appropriately or completely, the Transaction Manager or contract broker may request the complete information be submitted within a certain time frame. In order to promote consistency in our relationships with potential landlords, all proposers will have an opportunity to provide additional information.
- e) The analysis of the best economic option typically includes an analysis of all significant terms of the proposal, including rent, escalations, operating expenses, pass-through costs, the cost of tenant improvements (to be paid by the occupying agency), or any other charges, free rent or other incentives, and the suitability and efficiency of the space. The analysis will also include the one time costs caused by relocation when appropriate.
- f) The space that is eventually selected will normally be the one with lowest cost that meets the operational requirements of the agency that will occupy the space. If a different option is selected, the reasons will be documented.

1.1.5 Schematic Design and Test Fits

- a) For those facilities of interest to the transaction team, the Transaction Manager will arrange for test fits to be completed on at least two properties (whenever appropriate), based on base building drawings received from the proposer. Agencies will have the opportunity to review these plans and make comments.
- b) Typically, a potential landlord will pay for a test fit with the Commonwealth’s space planning contractor. If a deal is concluded where the selected landlord has paid for the test fit, the cost may come out of the tenant improvement allowance. In the circumstance that the potential landlord will not pay for the test fit, the cost will be paid by the agency directly. This can become a part of the negotiation process with a potential landlord.

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- c) The test fit plans will show how the agency can fit into the space given the information the agency has provided on its Space Planning Worksheet, including desired adjacencies, personnel, support and special spaces.

1.1.6 Capital Lease Determination

- a) A lease may be considered a “capital lease” if it meets certain requirements identified in the Commonwealth Accounting Policies and Procedures (CAPP) Manual which can be found at: http://www.doa.virginia.gov/Admin_Services/CAPP/CAPP_Main.cfm
- b) A lease may be considered a “capital outlay lease” pursuant to regulations published by the Department of Planning and Budget (DPB).

1.1.7 Negotiations between Proposers

- a) Negotiations with at least two of the proposers will be conducted. Negotiations will be defensible and fair to all proposers.
- b) Negotiations between proposers will be conducted by the individual Transaction Manager or by the contract broker under DRES supervision pursuant to processes as established by DRES.
- c) Since leases require the approval of the Governor, pursuant to 2.2-1149 of the Code of Virginia, our objective is to forecast, with as much accuracy as possible, the entire cost of the lease so this information can be presented when the lease is recommended for approval by the Governor. It is understood, however, that on occasion landlords may not be willing to spend the money to prepare detailed plans and specifications until they know the lease is approved. The issue can be addressed in one of the following ways in the lease document:
 - (i) The test fit plan can be used as a schematic floor plan to attach to the lease document and as a basis for development of a tenant improvement allowance. The lease would also contain a work letter, a list of performance specifications and finishes that would adequately protect the Commonwealth if the improvements were not completed in a satisfactory manner. The work letter would contain a schedule of construction plan preparation and approval, permission for the Commonwealth to terminate the lease if the parties can't agree, and a guaranteed maximum price, which price could not be exceeded without executing a lease amendment, which is subject to the prior approval of the Governor. A stipulated contingency amount would be stated in the document which could be applied to address minor discrepancies between the on site conditions and the plans, but could not be used for changes in the overall scope of the work.
 - (ii) If the landlord is willing to provide construction drawings, specifications and cost estimates prior to lease execution, the maximum guaranteed prices will be established.

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- (iii) The tenant can have the detailed plans, specifications and cost estimates prepared which will be part of the lease and the agency can agree to reimburse the landlord for these costs in the event the lease is not approved.
 - (iv) Other structures may be acceptable but will be reviewed by DRES for their legal and business ramifications.
- f) All negotiations are to be conducted in a manner to provide the best program solution for the agency at the most competitive cost. A *Cost Analysis Form* will be completed by DRES to evaluate the impact of one-time costs on the economics of the deal.
 - g) All negotiations will be properly documented by the party conducting them on behalf of the Commonwealth. A multi-sheet Excel spreadsheet entitled *Proposal Summary/Documentation of Negotiations With Landlord* is available that provides for the required documentation and establishment of the final terms.
 - h) The transaction team will be notified via IREMS that the final terms have been posted to the transaction.
 - i) If revisions to the deal are needed, they will be documented within the Transaction module of IREMS by the person conducting the negotiations.

1.1.8 Lease Document Preparation and Processing

- a) The lease template appropriate to the transaction will be prepared by the DRES Transaction Manager or the contract broker's designee. The template will be modified to reflect the negotiated lease terms.
- b) In the event the negotiated lease terms necessitate the drafting of language that is not provided in the standard lease template, the Transaction Manager will write a simple description of the requirement and submit the document to the DRES Legal Specialist who will draft the language, and/or refer it to the Office of the Attorney General for approval "as to form."
- c) The Transaction Manager will send notice to the transaction team that the draft documents are posted for review within IREMS. At the appropriate time the Transaction Manager will make the lease draft available to the Landlord and coordinate the signature process of the original documents.
- d) The Transaction Manager processes the lease document (executed by the Landlord) for approval and signature on behalf of the Governor, pursuant to Section 2.2-1149 of the Code of Virginia. The approval and signature process within the Commonwealth normally takes between seven (7) and ten (10) business days to complete.

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- d) Once the required signatures are received, the document is scanned, uploaded to IREMS, appropriate original(s) returned to the LL, and other scanned copies are sent to team members
- e) The DRES Transaction Manager (TM) sends the following information to the agency for their input into LAS:
 - (i) Date of Construction of Leased Building, if known
 - (ii) Estimated Economic Life of the Leased Building
 - (iii) Estimated Remaining Economic Life of the Leased Building
 - (iv) Fair Market Value of the land and either: i) the portion of the Building covered by the lease or ii) the entire building
 - (v) Executory costs which are included in the annual lease amount paid to the landlord.

1.1.9 Tenant Improvements, Construction and Occupancy

The goal is to provide for adequate and safe facilities for the provision of public services. This includes preparing the space within the tenant improvement budget and according to the space standards issued by DRES.

- a) The landlord will prepare the TI construction documents and cost estimates for review by the transaction team.
- b) The transaction team approves the plans and construction documents.
- c) The landlord costs out the construction, and the transaction team may need to make necessary adjustments to keep within the budget.
- d) The landlord contracts for the construction.
- e) The transaction team determines construction management methodology, depending upon the availability of resources.
- f) DRES may facilitate the procurement of a contract with a professional construction management service company to assist in the process. The agency must pay for the services.
- g) All change orders will be managed through DRES.

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- h) The transaction team determines the management of the installation of any cabling, telecommunications equipment and service, furniture installation, moving, etc. The agency will pay for these installations and services if not provided for in the tenant improvement allowance (TIA).
- i) The Transaction Manager, upon consultation with the transaction team, manages approval of the construction according to the lease, preparation and processing of the Certificate of Lease Commencement, and coordinating the first rent payment.
- j) By managing separate transactions in IREMS for the new space and the termination of an old lease, the Transaction Manager will manage any notifications required. The agency will provide for the physical relocation of its people and equipment, and the cost of clean-up associated with the vacated leased space.
- k) Move Management:
 - 1) From Currently Occupied Space:
 - (i) The agency will normally document the condition of the former leased premises upon vacancy with photographs, video, etc.
 - (ii) A checklist is provided in Appendix D.
 - 2) To New Space:
 - (i) DRES can assist agencies with move management to new space by providing a list of vendors, notional timelines, packing and staging advice, coordination of furniture orders, cabling, and VITA services (information being developed).

1.1.10 Facility Management During the Lease Term

- a) The occupying agency manages the day to day and routine maintenance issues with their resources and will maintain a record of all communications with the landlord relative to the maintenance of the facility. The record must include the date of the communication, the contact information for the occupant and the landlord, the maintenance issue, and copies of all correspondence.
- b) DRES will manage the enforcement of lease provisions requiring formal notice between the parties or for issues that may result in recourse involving self-cure or curative clauses.
- c) For those agencies where DRES has (or will) take over lease administration responsibilities, in addition to a) and b) above, DRES will pay all costs due to the landlord in the lease and will collect this cost plus any fees due to DGS by interagency transfer (IAT).

1.2 Land Lease/Surface Parking

This section is intended to be used in situations where land is needed for a state program, such as a farming operation, surface parking lot, etc. Where land needs to be leased for capital construction projects see Section 1.3 of this manual, Long Term Ground Leases. Land leases for communications equipment will be handled in accordance with Chapter 5, Tower Policy.

1.2.1 Initiate Lease Requirement

- a) The Transaction Manager and the agency work in tandem to identify a need to initiate a transaction.
- b) The Transaction Manager sets up a team meeting (in person or by conference call) to identify the scope and schedule of the transaction and to discuss team responsibilities.
- c) If the Commonwealth's contract broker is referred, the Transaction Manager will initiate the representation letter.

1.2.2 Definition of Lease Requirement

a) Certifications Required:

- (i) Pursuant to Section 4-5.07 of the Appropriation Act, agencies certify to DGS that the "volume of leased space conforms with the space planning procedures for leased facilities developed by the Department of General Services and approved by the Governor." Depending upon the use, there may be a need to refer to the *DRES Space Planning Policies and Procedures for Leased Facilities*, contained in Appendix A.
- (ii) Certification that "funds are available within the agency's appropriations ... for the cost of the lease" is also required by Section 4-5.07 of the Appropriation Act.

b) Agency Space Planning Worksheet and Office Space Questionnaire:

- (i) The agency provides information on its space requirements on the Space Planning Worksheet for Agencies (found in the documents folder in the Transaction module of IREMS) to the extent it applies to the property need. An OSQ will only be prepared if personnel are to be located at the leased property.
- (ii) If no OSQ is required, the certification of space and funding for this type of use can be prepared on the Certification of Space Needs and Funding Form found in the checklist documents folder in the Transaction module of IREMS or on the DRES website. The agency can check out the document, fill in the appropriate information, and check it back in to IREMS. The check in of the completed document will serve as the certification.

1.2 Land Lease/Surface Parking

1.2.3 Market Search and Solicitation

- a) Market solicitations of available property to lease will be conducted by the Transaction Manager or by the broker contracted by DGS/DRES. DRES will determine the most suitable method of conducting the market solicitation to generate the most competition, given the nature of the transaction and any known time limitations.
- b) The objective is to receive as many viable responses as possible and to give all interested parties an opportunity to make a proposal. The effort put forth to receive these responses may need to be adjusted in markets with limited inventory to assure adequate competition. Normally, three (3) responses will be deemed an adequate and acceptable number for consideration. If less than three (3) can be obtained, an explanation will be provided on the proposal summary form found in the Documents folders in the Transaction module of IREMS.
- c) The normal method to solicit for leased space is the request for proposals (RFP), which will detail the need for the property to be leased. The RFP will be sent directly to property owners with known properties in the market area, brokers, current landlords (as appropriate), etc. The typical response time for proposals will be one to two weeks, but the timing may be extended by DRES.
 - (i) The RFP is drafted by the Transaction Manager or the contract broker and is posted to the documents folders in IREMS where it will be reviewed within DRES. Any specific questions for the agency to answer will be directed to them via team mail in IREMS. To maintain momentum of the transaction, the agency may be asked to respond within a certain time frame.
- d) The agency, the Transaction Manager and/or contract broker will identify possible candidate locations in the market area, including the currently leased property, if appropriate. The Transaction Manager or contract broker will send the solicitation documents out to these identified sources and any other supplemental sources identified and will post the space need on eVA.
 - (i) A copy of the eVA posting and the listing of potential owners found in the market area, plus any supplemental sources that were sent a solicitation will be posted to the Documents folders in the Transaction module of IREMS.
- e) All proposals will be reviewed and evaluated for completeness, total cost, etc. and a determination will be made by DRES, upon consultation with the agency, if necessary, if any property is to be pursued further.
- f) Each solicitation will contain the following:
 - (i) Only the Department of General Services, Division of Real Estate Services (DGS/DRES), or its contract broker is authorized to negotiate the terms and conditions of a proposed lease agreement. The Proposer typically communicates directly with DRES and/or the contract broker and does not rely on communications with or information provided by field personnel or any other source.

1.2 Land Lease/Surface Parking

- (ii) The Commonwealth reserves the right to reject any and all offers, to negotiate separately with competing proposers, and to cancel the solicitation at any time. If, in the opinion of the Commonwealth, lease negotiations with a selected proposer cannot be concluded in a timely manner following the selected proposer's receipt of a draft lease agreement, the Commonwealth may discontinue negotiations and commence negotiations with another interested proposer.
- (iii) Certain disclosures related to leasing and doing business with the Commonwealth of Virginia are attached to the RFP. A copy of these is attached in Appendix C, Prohibited Lease Terms.
- g) Tours of the preferred properties by the transaction team (agency, broker, Transaction Manager) will be arranged by the Transaction Manager and/or the contract broker.
- h) The Transaction Manager will consult with the Dept. of Environmental Quality (DEQ) to determine if an Environmental Impact Report (EIR) will be needed for any of the potential properties, pursuant to Section 10.1-1188 of the Code of Virginia. A copy of the procedures manual can be found on the DEQ website at <http://www.deq.virginia.gov/eir/stateimpact.html>.
- (i) If the lease is to be written with DGS as Tenant, DRES will ask the landlord to provide the EIR report and DRES will submit it to DEQ for review.
- i) All proposal responses will be summarized on the Proposal Summary Form within three (3) business days (of receiving all information) by the contract broker or the Transaction Manager. If the proposer did not respond appropriately or completely, the contract broker or Transaction Manager may request the complete information be submitted within a certain time frame. In order to promote consistency in our relationships with potential landlords, all proposers will have an opportunity to provide additional information.
- j) The analysis of the best economic option typically includes an analysis of all significant terms of the proposal, including rent, escalations, operating expenses, pass-through costs, the cost of tenant improvements, or any other charges, free rent or other incentives, and the suitability of the property.
- k) The property that is eventually selected will normally be the one with lowest cost that meets the operational requirements of the agency using the property. If a different option is selected, the reasons will be documented.

1.2.4 Negotiations

- a) The Transaction Manager or the contract broker are encouraged to conduct negotiations between at least two of the proposers whenever possible. Negotiations will be defensible and fair to all proposers.
- b) All negotiations are to be conducted in a manner to provide the best program solution for the agency at the most competitive cost.

1.2 Land Lease/Surface Parking

- c) All negotiations will be properly documented by the party conducting them on behalf of the Commonwealth. A form is available that provides for the documentation of the various negotiations and the final terms.
- d) The transaction team will be notified via IREMS that the final terms have been posted to the transaction.
- e) If revisions to the deal are needed, they will be made in writing, reviewed by the Transaction Manager, documented and dated for the transaction record in IREMS.

1.2.5 Lease Document Preparation and Processing

- a) The lease template appropriate to the transaction will be prepared by the Transaction Manager or the contract broker's designee. The template will be modified to reflect the negotiated lease terms.
- b) In the event the negotiated lease terms necessitate the drafting of language that is not provided for in the standard lease template, the Transaction Manager will draft the language and submit the document to the DRES Legal Specialist, who may revise the language and/or refer it to the Office of the Attorney General for approval "as to form." This can happen at the initial drafting stage or after the Landlord has made comments.
- c) The Transaction Manager will send notice to the transaction team that the draft documents are posted for review within IREMS. At the appropriate time the Transaction Manager will make the lease draft available to the landlord and coordinate the signature process of the original documents.
- d) The Transaction Manager processes the lease document (executed by the landlord) for approval and signature on behalf of the Governor, pursuant to Section 2.2-1149 of the Code of Virginia. The approval and signature process within the Commonwealth normally takes between seven (7) and ten (10) business days to complete.
- f) Once the required signatures are received, the document is scanned, uploaded to IREMS, appropriate originals returned to the LL, and other scanned copies are sent to team members.
- g) DRES Transaction Manager (TM) sends the following information to the agency for their input into LAS:
 - (i) Fair Market Value of the land and either: i) the portion of the Building covered by the lease or ii) the entire building
 - (ii) Executory costs which are included in the annual lease amount paid to the landlord.

1.2.6 Construction/Maintenance of Improvements

1.2 Land Lease/Surface Parking

- a) The lease will address the placement and maintenance of any improvements on the property, including the responsibility for the cost.
- b) In the event of termination of a farm lease, the tenant may leave any annual crops on the property and harvest such crops when they reach maturity.
- c) The transaction team manages approval of any construction or tenant improvements according to the lease and the payment of rent.
 - (i) If the transaction involves relocation from an existing leased property, the Transaction Manager will manage any notifications required. The agency will provide for the physical relocation of its own personal property, equipment, or trade fixtures.

1.2.7 Facility Management During Lease Term

- a) The occupying agency manages the day to day and routine maintenance issues with their resources and will maintain a record of all communications with the landlord relative to the maintenance of the property. The record should at least include the date of the communication, the contact information for both the occupant and the landlord, the maintenance issue, and copies of all correspondence
- b) DRES will manage the enforcement of lease provisions requiring formal notice between the parties or for issues that may result in recourse involving self-cure or curative clauses.
- c) For those agencies where DRES has (or will) take over lease administration responsibilities, in addition to a) and b) above, DRES will pay all costs due to the landlord in the lease and will collect this cost plus any fees due to DGS by interagency transfer (IAT).

1.4 Residential Leases

Policy/procedure under development

1.4 Residential Leases

Policy/procedure under development

1.5 Lease versus Buy or Build Scenarios

Policy/procedure under development

1.6 Emergency Leases

- a) Leases of an emergency nature are exempt from these procedures, although all statutory requirements must be met, including certification of funding and conformance with space planning procedures pursuant to §4-5.07 of the Appropriation Act.
- b) The need for space shall be deemed an emergency in the following events:
 - i. Catastrophic occurrence such as fire or other casualty which renders existing facilities (owned or leased) unusable, and failure to immediately occupy substitute space would prohibit the agency from accomplishing its mission.
 - ii. The Governor declares an emergency for which space is needed to handle the emergency condition.
 - iii. Such other circumstances as the respective Cabinet Secretary deems to be an emergency.
- c) Notify the Director of the Division of Real Estate Services in writing providing a description of the conditions causing the emergency and copies of the emergency declaration if the emergency is under item (b) above. The written notification may be made by facsimile or email.

1.7 Temporary Extension of Existing Lease

- a) In the event an unexpected delay occurs with a planned move to a new leased facility that will not be completed by the expiration date of the existing lease, DRES may prepare the documentation necessary to extend the lease for a period of less than six months. The extension may be executed as a Temporary Lease and handled in the manner described in the Temporary Lease section of this Manual. For lease extensions longer than six months, a new transaction for a lease amendment may be needed. The DRES Transaction Manager will manage this process.

1.8 Temporary Lease

- a) Pursuant to Section 2.1-1149 of the Code of Virginia, leases having known and fixed terms of less than six months are exempt from the review and approval process. However, agencies must submit to the Division of Real Estate Services a notification that includes certification that the space meets the space planning procedures approved by the Governor and that funds are available, as required by §4-5.07 (or successor section) of the Appropriation Act.
- b) This exemption shall not be used to enter leases temporarily until a permanent lease is approved for the same space.
- c) Invoices for non-executive agency leases that are submitted to the Dept. of Accounts for payment must carry the following notation: "Temporary Lease excluded from approval of the Governor pursuant to Section 2.2-1149 of the Code of Virginia. The beginning date is _____ and the termination date is _____."
- d) DRES may delegate the payment(s) for a temporary lease for executive branch agencies whose leases are administered by DRES. The agency must submit its request for a temporary lease, in writing, to the Transaction Manager. A response to the request for a temporary lease will be made by DRES within eight (8) business days from receipt of the request.
- e) Temporary lease documents will not contain any renewal language that could be construed as allowing the lease to extend beyond a total of six (6) months.

Appendices

Appendix A

Space Planning Policies & Procedures for Leased Facilities

1. **PURPOSE:** This policy provides guidelines and procedures for analyzing tenant needs and determining building space requirements for state departments, agencies and institutions seeking leased facilities. The policy replaces Section 5 and Appendices C and I of the *Real Property Management Manual, Chapter One: Acquisition by Lease* dated December 15, 1993. This revision updates any previously published space planning guidelines in support of the portion of the real estate initiative designed to reduce the amount of space leased by state agencies. In particular, the 1993 guidelines allowed a maximum of 250 square feet per person, the 2005 guideline was 210 usable square feet per FTE (USF/FTE), and effective January 1, 2007, the new, reduced guideline allows a maximum of 205 USF/FTE, excluding approved special needs space.
2. **AUTHORITY:** Virginia Code §2.2-1149 and §4-5.07 of Chapter 4, 2004 Acts of the Virginia General Assembly (Appropriation Act) and subsequent Acts.
3. **RESCINDED POLICIES:** Section 5 and Appendices C and I of the *Real Property Management Manual, Chapter One: Acquisition by Lease* dated December 15, 1993.
4. **EFFECTIVE DATE:** January 1, 2007
5. **POLICY ADMINISTRATION:** This Policy is administered by the Division of Real Estate Services of the Department of General Services (DRES). Required documents and materials should be submitted electronically to the DRES Transaction Manager (TM). [*first name.last name@dgs.virginia.gov*].

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7. **APPLICABILITY:** Departments, agencies and institutions of the Commonwealth shall follow these guidelines in the acquisition of leased building space.
8. **DEFINITIONS:**

Agency: Any department, agency or institution of the Commonwealth of Virginia subject to Va. Code §2.2-1149.

DGS: The Department of General Services

DRES: The Division of Real Estate Services, a division of the Department of General Services.

Appendix A

Space Planning Policies & Procedures for Leased Facilities

Standard Method for Measuring Floor Area in Office Buildings, ANSI/BOMA Z65.1-1996 – Standards adopted jointly by the American National Standards Institute and the Building and

Owners Managers Association to provide a method of measuring building floor space that is commonly understood by landlords and tenants. The standards specify how space is to be measured (e.g., from the inside face of a wall, the outside face or the center) and it distinguishes between space under the control of tenants and other space the tenants require in common.

- Usable Space generally describes the space under the control of the tenant such as offices and circulation space among offices. Restrooms that are under the control of the tenant may be included. Typically referred to as usable square feet or USF.
- Rentable Space generally describes the entire space enclosed within a building, less any vertical floor penetrations (such as elevator shafts and stairwells). Tenants generally pay a pro rata share of the common use spaces that include such areas as entryways and lobbies, hallways, elevator lobbies, mechanical rooms, and common use restrooms. Usually referred to as rentable square feet or RSF, this is typically the calculated space on which tenants pay rent.
- Core Factor - Landlords often predetermine the ratio of usable space to rentable space, expressed as a percentage and sometimes called a “core factor”. The area leased by a tenant is increased by the core factor to convert usable square feet to rentable square feet.

9. POLICY:

Virginia Code §2.2-1149 provides that no state department, agency or institution shall acquire real property by gift, lease, purchase or any other means without following the guidelines adopted by the Department of General Services and obtaining the prior approval of the Governor. Section 4-5.07 of the current Appropriation Act provides that Agencies shall not acquire property by lease until the Agency certifies to the Director of the Department of General Services that the volume of space conforms to space planning procedures developed by the Department of General Services and approved by the Governor. The space planning procedures are provided in the guidelines herein.

Determining Space Need:

The Space Guidelines set forth in Appendix A-1 are provided to determine floor space needs.

- The allowable usable square footage numbers set forth in the Space Guidelines are the maximum allowed and do not constitute an upward goal to be achieved. The number of hardwalled offices planned out in new or renovated space shall not exceed the maximum number determined by DRES, in an effort to provide for maximum flexibility.

Appendix A

Space Planning Policies & Procedures for Leased Facilities

- Agencies shall prepare the Agency Space Planning Worksheet in a manner that communicates its functional space requirements. DRES will use this information to prepare the Office Space Questionnaire (OSQ) which will determine the amount of space that will be sought for lease and issue an approved OSQ.

- Agencies are advised that the preparation of the OSQ and the space design process are not the same. The OSQ is a paper exercise that provides space requirements for rough planning. Design, however, is constrained by building walls, building systems, structural supports and such, so the end result is that the actual amount of space leased may be more or less than that approved in the OSQ. However, though the number of square feet may be different, the space shall be planned and constructed substantially in accordance with the requirements on the approved OSQ.

- The aggregate usable square footage determined by the OSQ **shall not exceed 205 usable square feet** (USF) per authorized FTE without approval of the Division of Real Estate Services (DRES). This excludes the agencies' special needs space as approved by DRES.

DRES Assessment of Size of Existing Leased Space:

The Space Guidelines presented in Appendix A-1, establishing the amount of usable space allowed for particular functions, are incorporated into the DRES Space Planning Policies and Procedures. Agencies shall adhere to these procedures for all new leases, for renewal of existing leases and for adding space in existing leased facilities. In instances where an Agency occupies and requests to remain in non-conforming space, DRES will determine the feasibility and impact of remaining in the existing space, reconfiguring the space, or relocating.

DRES Space Planning Guidelines

Appendix A-1

Space Guidelines

The following guidelines are to be used when preparing the Agency Space Planning Worksheet and the Office Space Questionnaire (OSQ) for leased space.

Your DRES Transaction Manager can assist with questions concerning these guidelines.

OFFICE SPACE		MAXIMUM AREA (Usable Sq. Feet)	
1. PERSONNEL SPACE		Private	Open
Agency or Department Director (position requires confirmation by the General Assembly)		196	
Agency or Department Director		150	
Asst. Director and Confidential Management Staff ¹		120	
Professional Staff Supervisor			96
Professional Staff and Support Admin. Supervisor			64
Contractors/Auditors			48
Field Staff, Floating Staff, Receptionist and Support Admin., Volunteers and Interns			48
<p>¹ “Confidential Management Staff” shall mean those staff members who conduct their confidential functions the majority of their time and a shared lockable area is not considered practical for occasional confidential functions (e.g., the tools needed for the confidential work are not available in any shared lockable area). Storage and maintenance of confidential files (such as personnel files) will NOT serve as justification for a private office. A position description (describing the features of the job that requires confidential work be done at the employee’s desk rather than in a shared confidential room and constitutes a majority of their time) is required as justification for a private office.</p> <ul style="list-style-type: none"> ▪ <u>Future Growth</u> - If the Agency has specific instances where there is a reasonable assurance that a particular program will grow and the lease procurement cycle has begun (or will soon begin), then Agencies may add a separate category to the personnel section of the Agency Space Planning Worksheet and provide justification for a growth area to DRES for review. This would include instances where the Agency has made specific funding requests for new FTE and/or new programs in a particular location. DRES will consider the request and work with Agencies to resolve space issues in these instances. ▪ <u>Field office personnel</u> who are routinely out of the office 50% or more of the normal work week shall be restricted to open workstation space and may be considered as ½ of an FTE position for the purposes of determining office space requirements. Exceptions may be considered by DRES with appropriate justification of the nature of the position. ▪ Personnel who “float” between locations shall not be considered more than ½ of an FTE at any location where they occupy space. 			

DRES Space Planning Guidelines

Appendix A-1

2. SUPPORT SPACE	MAXIMUM AREA (Usable Sq. Feet)
A. RECEPTION AREAS (excluding receptionist) - 1-5 visitors (peak*)	144
Over 5 Visitors add (per additional visitor, peak*)	10
B. CONFERENCE ROOMS (per chair, peak*) – First 10	25
Plus sq. feet for each person over 10	15
<i>* Peak is defined as the highest number of users at any one time on a frequent (typically 4 to 5 times per week) basis during a weekly period</i>	
C. FURNITURE/EQUIPMENT (Except in personal offices)	
Copier (freestanding)	25
Copy Room (including copier)	80
Plan/Flat File	25
Lateral File (typically 30", 36", or 42" wide, 13 3/4", 16 3/4" or 19 1/4" deep)	10
Vertical File (letter) (typically 15" wide by 25", 26 1/2", or 28 1/2" deep)	7
Vertical File (legal) (typically 18 1/4" wide by 25", 26 1/2", or 28 1/2" deep)	8
Fax Machine, Network Printer, Shredder	10
Scanning Station (w/ chair)	24
<ul style="list-style-type: none"> ▪ In planning for file rooms, all agencies are required to comply with records retention requirements established by the Library of Virginia. ▪ For filing needs not listed above (such as high density systems or use of shelving for file rooms), indicate the appropriate information on the OSQ for review by DRES. 	
D. LOUNGE/BREAKROOMS	
Standard kitchen equipment	60
Seating (Per chair, as determined below)	15
<i>Lounge/Breakrooms should be requested when there is a demonstrated need, such as a location where no building facilities or local facilities are available.</i> <ul style="list-style-type: none"> ▪ To determine seating space, use 20% of the FTE, times 15 SF, plus 60 SF for equipment (example: 24.5 FTE * 20% = 4.9 * 15 SF = 73.5 SF + 60 SF = 134 SF rounded). 	
E. OTHER SUPPORT SPACE NOT LISTED ABOVE	As approved by DRES
<ul style="list-style-type: none"> ▪ This includes general storage areas, computer room, restroom facilities (if exclusive to the Agency's space requirement), or other unique spaces. ▪ Submit detailed information on the space requirement and how the size was determined. 	
3. "SPECIAL" SPACE REQUIREMENTS	MAXIMUM AREA (Usable Sq. Feet)
A. INTERVIEW AREAS	80
B. TESTING, TRAINING OR HEARING ROOMS (per chair, peak) Seminar Seating	15

DRES Space Planning Guidelines

Appendix A-1

Auditorium Seating	10
C. EXAMINING/MEDICAL ROOMS	120
D. OTHER "SPECIAL" SPACE TYPES NOT LISTED ABOVE <ul style="list-style-type: none"> ▪ <i>This includes specific client service areas, laboratories, urinalysis or blood screening areas, courtrooms, client "holding rooms," or other spaces that are considered unique to the Agency's program.</i> ▪ <i>Submit detailed information on the space requirement and how the size was determined.</i> ▪ <i>DRES has identified certain agencies and institutions having special space requirements that may cause the overall USF to exceed the 205 USF/FTE standards. DRES recognizes that additional special space requirements may be identified and considered as programs grow and change over time. We encourage agencies and institutions to work with DRES to identify and justify any new special space needs so that the appropriate course of action can be determined.</i> 	As approved by DRES
4. CIRCULATION (to compute total Usable Square Feet) <u>Unless otherwise directed by DRES:</u> <ul style="list-style-type: none"> • <i>If the # of private offices is > the # of open/modular workstation spaces, add 30% to the total of all Personnel, Support and Special space for circulation. OR</i> • <i>If the # of private offices is < the # of open/modular workstation spaces, add 35% the total of all Personnel, Support and Special space for circulation.</i> NOTE: THE AGGREGATE USABLE SQUARE FEET (USF) SHALL NOT EXCEED 205 USF PER FTE (excluding approved special needs) WITHOUT THE PRIOR APPROVAL OF DRES.	
5. WAREHOUSE/STORAGE, RETAIL, SERVICE (E.G., DMV BRANCHES, RESIDENTIAL, LAND AND OTHER TYPES OF SPACE NOT LISTED)	
<i>An OSQ may not be required if the Agency submits appropriate documentation of the space need, including a detailed description of the space required and its contemplated use.</i>	As approved by DRES

Appendix B

General Provisions, Leases

1. Accessibility

The objective is that all leased state facilities will be accessible to all persons needing access to a facility, including customers, staff, visitors, etc. The Americans with Disabilities Act (ADA) of 1990 requires that a public entity provide equal program accessibility to the disabled and that it may not discriminate in employment of the basis of lack of accessibility. State law provides that while public entities may not be required to lease accessible space, if non-accessible space is occupied, that the public entity must provide access to all of the programs conducted in that space and it must provide reasonable accommodations for employees who may need them.

Variations from the standard lease language will necessitate review by the Office of the Attorney General for compliance with current law.

2. Attorney General Approval of Lease Documents “As to Form”

Expense leases do not require approval “as to form” by the Office of the Attorney General and standard templates are available that do not require separate approval. However, DRES will request legal review of leases when substantive changes made to the standard lease form may increase the risk of the Commonwealth leasing the space. DRES’ Legal Specialist or the Office of the Attorney General will determine if specialized review and/or approval is necessary.

3. Condominium

A lease of space within a structure with condominium ownership will initiate the need for a review of the condominium documents. The broker or the Transaction Manager will request these documents early in the process. Legal review of these documents is required.

4. Conflicts of Interest

Persons engaged in leasing real property to or on behalf of the Commonwealth are subject to the provisions of the State and Local Government Conflict of Interests Act (Section 2-2-3100 et seq of the Code of Virginia).

5. Consolidation and Co-location

Consolidation and co-location of state facilities can have the potential for improved service delivery, shared resources, and cost savings. DRES will seek opportunities to consolidate or co-locate state agencies to the greatest practical extent in order to arrive at the most cost efficient alternative. The Commonwealth’s contract broker and the Transaction Manager will assess this issue on an ongoing basis as transactions are contemplated.

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General Provisions, Leases

6. DGS as Tenant

Leases for agencies within the Executive Branch will normally be in the name of DGS as tenant, with occupancy by the agency, department or institution. DGS assigns leased space to agencies by an agency to agency memorandum of agreement (MOA) between DGS and each executive branch agency. The MOA spells out the responsibilities of the parties.

DGS will be responsible for payments to landlords and agencies will reimburse DGS for the cost plus any fees associated with the transaction. Lease administration by DRES includes sending legally required notices and the process of managing the contract terms.

Leases for non-executive branch agencies will be in the name of the agency, department or institution.

7. DRES Record Keeping Requirements

Pursuant to §2.2-1136 of the Code of Virginia, DRES is “responsible for the maintenance of real property records of all state institutions and agencies, except records of real property acquired by the Department of Transportation for the construction of highways,” To meet this requirement, DRES may request information from agencies and institutions from time to time.

9. Environmental Impact Reports (EIR)

Pursuant to Section 10.1-1188 of the Code of Virginia an EIR may be required for leases considered “major state projects.” The requirements may apply to new construction or an expansion where the footprint of the building is being altered. Information on the EIR procedures can be found on the DEQ website, at www.deq.virginia.gov/eir/stateimpact.html.

If the lease is to be taken in DGS’ name, DRES will initiate the process to determine if an EIR is needed, procure the EIR and submit it to DEQ for processing. If DGS is not to be the Tenant, the agency will manage this process.

Lease negotiations will incorporate who will pay for the EIR.

10. Executive Order 48 (*Energy Efficiency in State Government*)

Executive Order 48 sets forth certain instances where the Division of Real Estate Services will consider certain energy efficient preferences in recommending approval of new or renewal leased facilities. Below is a partial list to be considered:

- In a metropolitan area within ¼ mile of a bus, trolley, Metro, or commuter rail stop;
- When leased facilities meet the U.S. Green Building council’s LEED rating system or the U.S. EPA/Department of Energy’s “Energy Star” rating’

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General Provisions, Leases

- Facilities that are pedestrian and bicycle accessible

11. Exceptions

Exceptions from any of the requirements contained in these procedures will be issued only under extraordinary circumstances. Agencies cannot be exempted from legal requirements. Requests for exceptions must be documented and submitted in a timely manner to DRES for consideration.

12. Lease Periods

Leases should normally be for a period of five (5) years. DRES will assess other situations as transactions arise. Shorter term leases may be justified when agencies' needs are unpredictable and longer term leases may be justified in certain circumstances, such as the need to cover the cost of extraordinary tenant improvements over a longer term.

13. Letters of Intent

Letters of intent are not to be used in real estate transactions.

14. License versus Lease

Documents that define a premise for which an occupant is responsible will be treated as a lease, regardless of the title of the document. Such documents will be handled as a lease under §2-2.1149 of the Code of Virginia.

15. Locating Facilities in Urban Centers

Section 2.2-1154 B of the Code of Virginia shall be considered when locations of leased facilities (not including institutions of higher education) are being evaluated. This section is reprinted below:

B. The Department shall require every state department, agency or institution responsible for the construction, operation or maintenance of public facilities within the Commonwealth, when siting state facilities and programs, to evaluate the feasibility of siting such facilities and programs in the Commonwealth's urban centers. In making such evaluation, the agency shall consider (i) the fiscal advantages of utilizing the existing infrastructure available in urban centers as compared to the construction of new infrastructure in less developed areas, (ii) the potential savings associated with leasing facilities from the private sector in urban centers as compared to purchasing or constructing new facilities in other areas, (iii) the convenience to employees and citizen users of state facilities and programs of placing such facilities and programs in close proximity to the road and transportation systems and other amenities found in the

Appendix B

General Provisions, Leases

Commonwealth's urban centers, and (iv) whether the local governing body is supportive of the location as a desirable use of available land resources.

(cont.) This subsection shall not be construed to limit the ability of a state department, agency or institution to locate facilities based on other factors such as a rural locality's desire to stimulate economic development or the need to have regionally dispersed services.

16. Minority Participation

The Commonwealth encourages the use of qualified Small, Women and Minority-Owned (SWAM) Businesses, certified through the Department of Minority Business Enterprises (www.dmb.e.virginia.gov). Where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the landlords are encouraged to offer such business to small, women, and/or minority-owned (SWAM) businesses. If SWAM subcontractors are used, the landlord will need to report the use of SWAM subcontractors by providing, at a minimum, the following information: name of firm, phone number, total dollar amount subcontracted, category type (small, women, or minority-owned), and type of product/service provided.

17. Move Management (See Appendix D)

DRES will assist with move management for agencies on an as needed basis to limit double occupancy. For executive agencies where DRES administers the leases, DRES will manage any notifications to the Landlord and the agency will manage the relocation of its own personal property, equipment and trade fixtures.

18. No Cost Leases or Free Space

Any occupancy or use of space or land by a state agency, department or institution (unless separately delegated), regardless of its cost, is subject to §2-2.1149 of the Code of Virginia, requiring approval of the Governor. It must also comply with the Section 4.5-07 (or subsequent edition) of the Appropriation Act, and DGS' space guidelines. The Commonwealth's use of any property, even at no cost, creates certain liabilities that must be addressed via all cited statutes.

19. Occupancy/Tenant Improvement Standards

Agencies will, at all times during any lease term, abide by the occupancy standards and guidelines set forth by DRES contained in this manual (as attached to the standard RFP template). These standards promote good quality, safe environments for staff and clients of state agencies' public programs. Where these standards may conflict with a landlord's building standard finishes, the differences will be evaluated by DRES and a decision made as to the final choice.

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General Provisions, Leases

Agency specific standards will be reviewed by DRES and used on a case by case basis.

20. Parking

- TBD – establish own policy for leases outside of capital area
- Agency parking needs will be initially determined on the basis of 4 spaces per 1,000 rentable square foot, not on the number of employees.
- Parking for fleet vehicles will be assessed based on the agency's demonstrated need.
- Parking for customers will be assessed based on the agency's demonstrated need (such as visitor logs, etc.).

21. Payment of Rent in Arrears

It is the policy of the Commonwealth to pay rent in arrears. This is addressed in the request for proposals (RFP) as notice for the landlord.

22. Processing of Transactions for Approval

Transactions are generally handled on a "first come, first served" basis. DRES will, to the extent possible, honor requests for expeditious handling on a case by case basis, subject to the availability of resources. Seven (7) to ten (10) business days should be allowed for the processing of documents for the Governor's approval.

23. Signing and Recording of Leases

In general, signatures to a lease should be notarized. It is recommended that leases be recorded in the following instances:

- a lease of greater than 5 years;
- a lease with incentives payable by Landlord at any time other than the first few months of a lease; and/or
- a lease where the agency invests money for tenant improvements up front.

If a Landlord asks that a lease not be recorded, the lease must provide for us to record a Memorandum of Lease.

For executive agencies where DRES administers the leases, DRES will take care of having the leases recorded, assuring that no taxes or fees are charged by the local clerk of the court. For all other agencies, DRES can provide information to assist in having the leases recorded.

24. Standard State Lease

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General Provisions, Leases

It is a requirement that a standard Commonwealth of Virginia Deed of Lease form be utilized for all Commonwealth lease transactions. DRES will prepare the lease on the standard form for landlord's review and signature, followed by Tenant's approval process and signatures through the Governor's Office. Substantive revisions to this form by the landlord may require additional legal review at the state level and can result in a delay of the lease approval process.

25. Virginia Public Procurement Act (VPPA)

Real estate transactions are not included in the Virginia Public Procurement Act (VPPA). However, goods and services that may be required to finalize real estate transactions may require compliance with the VPPA.

Appendix C

Prohibited Lease Terms

Because of a variety of specific laws and/or the doctrine of sovereign immunity, departments, agencies and institutions cannot agree to certain terms commonly found in real estate leases, agreements and contracts. The prohibited terms include:

1. Any express or implied waiver of the sovereign immunity of the Commonwealth of Virginia, any department, agency or institution, or any of its or their officers, agents or employees
2. Any agreement or promise to indemnify, defend or hold harmless any person or entity.
3. Any agreement to provide or maintain insurance or insurance coverage to or for the benefit of any person or entity.
4. Any agreement that provides for binding arbitration or other binding dispute resolution.
5. Any estoppel against the Commonwealth or a department, agency or institution, or any agreement which requires the execution of an estoppel certificate, any provision that would prevent the Commonwealth from making claims or establishing any defense against claims, or waiver of trial by jury.
6. Any agreement that constitutes a waiver of subrogation or waiver of subrogation rights.
7. Any agreement requiring or providing for the payment of any attorney's fees, collection costs, penalties or liquidated damages. *We can consent to paying attorney fees, but only if it is a mutual obligation in which the loser pays the attorney fees of the winner.*
8. Any agreement purporting to grant security interests in property of the Commonwealth of Virginia; and, any agreement providing default provisions which provide for or authorize (1) landlord to use any self-help remedies, (2) the distress or seizure of property of the Tenant, or (3) the blocking of the right of Tenant's access to and removal of property and records of the Tenant from the Leased Premises.
9. Any provision prohibiting collection of debt by the Commonwealth of Virginia or any of its agencies under Virginia Code §58.1-520 et seq. (Setoff Debt Collection Act). *E.g., a provision that says "Tenant shall pay Rent without setoff or deduction" is a violation of this prohibition.*
10. Any provision that seeks to over-ride, constrain, alter or amend the requirement for appropriation of funds to be paid by the Commonwealth of Virginia or any its agencies, departments or institutions.
11. Any provision that requires paying rent in advance.

These issues are non-negotiable, and any contrary provisions in a lease, contract or agreement are unenforceable against the Commonwealth or its agencies.

Appendix D

Tenant/Occupant Relocation Checklist

Old Location			New Location		
Moving From (address):			Moving To (address):		
Former LL Contact Name:			New LL Contact Name:		
Email:			Email:		
Phone:			Phone:		
Choose Mover:					
Lease expiration:			Lease commencement:		
			Arrange with building office for exclusive use of elevators during move-in.		
			Arrange for security, and telephones at building for use during move-in		
			Order furniture, if needed, for areas not in current space		
			Order replacement office equipment for new space		
Utility/Service Notifications:			Begin Utility/Service:		
Company	Phone #	Date Svc. Ends	Company	Phone #	Date Svc. Begins
Power co.			Power co.		
Water/sewer			Water/sewer		
Telephone			Telephone		
Natural gas			Natural gas		
Oil			Oil		
Landscaping			Landscaping		
Cleaning Svc.			Cleaning Svc.		
Trash Pick Up			Trash Pick Up		
Other			Other		
Rent and/or additional costs to be paid after termination:			Send change of address notifications		
Document condition of premises after vacating with photos/video			Document any damage from movers		